

REMARKS

Reconsideration is requested.

Claims 1-30, 34 and 49 have been canceled, without prejudice. Claim 31 has been amended to include the details of claim 49, to advance prosecution and without prejudice. Claims 31-33, 35-48 and 50-61 are pending.

The Examiner is again requested to acknowledge receipt of the certified copy of the priority document FR 98/07802, filed April 3, 2002. See, page 4 of the remarks of the Amendment filed April 3, 2002 as well as the attached Post Card receipt as evidence the Patent Office has received the certified copy of the priority document.

The Examiner is again requested to consider FR 2718961 and WO 97/27835, cited to the Examiner with the Information Disclosure Statement filed November 13, 2000. The Examiner has returned an executed copy of the PTO-1449 Form listing the same indicating that these references have not been considered as the Examiner has lined through the reference to the same while indicating consideration of WO 96/01632, U.S. Patent No. 4,835,148 and U.S. Patent No. 4,722,837. As noted on the attached Post Card receipt, the Information Disclosure Statement filed November 13, 2000, included a PTO-1449 Form and the cited references. Further copies of the same are not believed to be required however the Examiner is requested to contact the undersigned if a further courtesy copy should be forwarded to the Examiner.

Return of an initialed PTO-1449 Form confirming the Examiner's consideration of FR 2718961 and WO 97/27835, pursuant to MPEP §609, is requested.

The Section 112, second paragraph, rejection of claims 40, 50 and 51 is traversed. Reconsideration and withdrawal of the rejection are requested in view of the following comments.

In response to the Examiner's query spanning pages 2-3 of the Office Action dated April 8, 2003 (Paper No. 16) the applicants submit that an "active material" and an "active principle" are not the same and that one of ordinary skill reviewing the specification would appreciate as much.

Specifically, an active principle is a constituent having a characteristic therapeutic action. Active principles of the invention are recited, for example, in claim 31. See also, for example, page 3, line 38 to page 4, line 39 of the specification.

The active material, for example of an anionic surfactant, corresponds to the anionic surfactant as such. The expression "active material" is particularly used when surfactant is used as a solution, a percentage y % of active material being indicated. When a defined quantity q of the surfactant solution is used, the effective quantity of surfactant is equal to $q \times y/100$. See, for example, page 6, line 7 to page 7, line 30 of the specification.

As an example, the applicants request the Examiner's consideration of the following:

The anionic surfactant (sodium lauryl ether sulfate) used in Example I is marketed under the trademark TEXAPON N70® and comprises 70% of active material. The proportion of TEXAPON N70® is 17 g. Consequently, the proportion of sodium lauryl ether sulfate in the composition of Example I is equal to $17 \times 70/100 = 11.9$ g.

Claim 50 has been amended to correct an inadvertent typographical error. The applicants submit that "The weight ratio active material of anionic surfactant/active material of amphoteric surfactant" of claim 50 is the ratio of active material of anionic surfactant to active material of amphoteric surfactant, with the term "active material" being defined above.

In claim 51, "the weight ratio active material of the anionic surfactant/propenetrating agent" is the ratio of active material of the anionic surfactant to propenetrating agent.

The applicants believe these stated ratios will be clear to one of ordinary skill in the art.

Claim 40 has been amended to advance prosecution, specifically, the objected-to terms "derivative" and "water-solubilizing" have been deleted without prejudice.

Anionic groups are well-known by one of ordinary skill in the art. Moreover anionic groups which are more particularly used in the invention, are mentioned on page 6, lines 18-20.

The claims are submitted to be definite and withdrawal of the Section 112, second paragraph, rejection of claims 40, 50 and 51 is requested.

The Section 103 rejection of claims 31, 32, 37-51, 55 and 57-61 over Cameron (U.S. Patent No. 4,722,837) in view of Preuilh (U.S. Patent No. 6,106,848) and The Handbook of Cosmetic Science and Technology, pages 222-224 is traversed. Reconsideration and withdrawal of the rejection are requested in view of the following distinguishing comments.

Cameron et al. (U.S. 4,722,837) describe a medicated shampoo composition for treating scalp disorders such as flaking, scaling, dandruff, psoriasis, eczema and seborrhoea (col. 1, lines 57-59). The composition comprises pharmacologically acceptable ingredients including:

- (i) 0.1-0.5 % by weight of hydrocortisone in combination with
- (ii) 2.5-5% by weight of colloidal sulphur, in a shampoo base (col. 1, lines 59-67).

The shampoo base comprises detergent selected from the group consisting of lauryl sulfate salt, laureth sulfate salt, amphoteric and betaine (col. 2, lines 22-27).

The examples only contain an anionic surfactant (sodium C14-16 olefin sulfonate) (col. 3).

The differences between the presently claimed invention and the teaching of Cameron, as noted by the Examiner, are:

- no propenetrating agent,
- the compulsory combination of anionic and amphoteric surfactants.

The problem raised in Cameron is to obtain stable medicated shampoo compositions with an improved shelf life (col. 1, lines 40-49).

This problem is solved in Cameron by combining a corticoid and a colloidal sulphur.

Preuilh et al. (U.S. Patent No. 6,106,848) describe stable, topically applicable oil-in-water bioaffecting emulsions comprising:

- 30 to 50% by weight of at least one propenetrating glycol,
- at least one emulsifying agent such as an anionic amphiphilic polymer, and
- at least one biologically active agent.

The problem raised in Preuilh is to provide oil-in-water emulsions with a suitable viscosity while preserving the propenetration properties of glycol in order to facilitate the application of topical compositions comprising a high percentage of glycol. The definition of the propenetrating properties of glycol is given col. 1, lines 19-21.

The problem is solved in Preuilh by the addition of a polymeric emulsifying agent such as an anionic amphiphilic polymer, to provide a suitable viscosity (3-10 Pa.s).
See, claim 1, and col. 1, line 64 – col. 2, line 3.

The Handbook of Cosmetic Science and Technology describes different types of ingredients that can be contained in shampoo formulations, among which are cited anionic surfactants and amphoteric surfactants.

Anionic surfactants are usually used as primary surfactants and confer cleansing properties to shampoo formulations.

Amphoteric surfactants can be used as secondary surfactants to stabilise the foam and mitigate the irritancy of other materials and, in some case, will modify product viscosity.

The problem of the present application consists in improving the penetration of active principles while improving the characteristics of volume and compactness of the foam and allowing the hair to exhibit good cosmetic properties such as softness, non-greasiness and manageability, as well as obtaining a composition which is stable over time.

The present inventors discovered that this problem can be solved by the combination as claimed, for example, in claim 31.

In view of the above description of the cited art, there was no motivation for one of ordinary skill in the art, who wished to solve the problem of the present application, to combine Cameron et al. relating to a stable medicated shampoo compositions with an improved shelf life, with Preuilh et al. relating to the stability of emulsions comprising high content of propenetrating glycol and *The Handbook of Cosmetic Science and Technology* which teaches the possible combination of amphoteric and anionic surfactants.

Even assuming arguendo that one of ordinary skill in the art would have combined the three cited documents in order to solve the problem of the present application, this combination would not have led it to the presently claimed invention.

As a matter of fact, Cameron et al. teach a stable composition comprising a corticoid and a colloidal sulphur in a shampoo base as indicated above. None of the two remaining documents, namely Preuilh et al. and *The Handbook of Cosmetic Science and Technology*, indicate or suggest that the colloidal sulphur can be removed from the composition of Cameron et al. and that a stable composition could be obtained also with the combination as claimed, for example, in claim 31.

Moreover, Preuilh et al. teach an important quantity of propenetrating glycol. There is no indication nor suggestion in Preuilh et al., or in Cameron et al., or *The Handbook of Cosmetic Science and Technology*, which would have led one of ordinary skill in the art to use the quantity of such an agent, as claimed, in combination with at least one active principle and amphoteric and anionic surfactants, to improve the penetration of the active principle. One skilled in the art would have rather thought that

reducing the quantity of the propenetrating agent would not lead to an effective penetration of the active principles.

Consequently, the invention as claimed in claim 31, and in dependent claims 32, 37-48, 50, 51 and 57-61, could not have been obvious to one of ordinary skill in the art at the time the invention was made and withdrawal of the Section 103 rejection of the same over Cameron, Preuilh and *The Handbook of Cosmetic Science and Technology* is requested.

The Section 103 rejection of claims 33, 35 and 36 over Cameron et al. (U.S. Patent No. 4,722,837) in view of Preuilh et al. (U.S. Patent No. 6,106,848) and *The Handbook of Cosmetic Science and Technology*, and in further view of Kligman et al. (U.S. Patent No. 5,998,395) is traversed. Reconsideration and withdrawal of the rejection are requested in view of the above and the following further comments regarding Kligman.

Kligman et al. (U.S. Patent No. 5,998,395) describe methods of treating inflammatory dermatosis, with the particular combination corticosteroid/retinoid in a carrier pharmaceutically acceptable for both the retinoid and corticosteroid. This document does not describe any particular carrier.

The problem raised in Kligman relates to control and to clear more effectively the inflammatory dermatosis. This problem has been solved by Kligman by using the particular combination corticosteroid/retinoid.

Consequently, there was no more indication nor motivation in Kligman leading one of ordinary skill in the art to use either corticoid(s) or retinoid(s) and retinoid(s) (that is to say at least one active principle selected from the group consisting of a corticoid

and a retinoid), in combination with at least one anionic surfactant, at least one amphoteric surfactant and 0.1 to 25 weight % of a least one propenetrating agent, to solve the technical problem of the presently claimed invention.

The problem raised in the present application does not consist in using new active principle as taught by Kligman et al., but consists in improving the penetration of the active principle while improving the characteristics of volume and compactness of the foam and allowing the hair to exhibit good cosmetic properties such as softness, non-greasiness and manageability.

Moreover, Kligman fails to cure the deficiencies of the primary references, such as are noted above.

Therefore, there was absolutely no more motivation for one of ordinary skill in the art wishing to solve the problem of the present invention to further combine the first three documents with Kligman et al., said latter reference relating to the use of new active principle.

Claim 31 was not obvious and the dependent claims 33, 35 and 36 are therefore not obvious in view of Cameron combined with Preuilh et al., *The Handbook of Cosmetic Science and Technology*, and Kligman et al. Withdrawal of the Section 103 rejection is requested.

The Section 103 rejection of claims 52-54 and 56 over Cameron et al. (U.S. Patent No. 4,722,837) in view of Preuilh et al. (U.S. Patent No. 6,106,848) and *The Handbook of Cosmetic Science and Technology*, and in further view of Cauwet et al. (U.S. Patent No. 3,984,544) is traversed. Reconsideration and withdrawal of the

rejection are requested in view of the above and the following further comments regarding Cauwet.

Cauwet et al. (U.S. Patent No. 5,661,118) describe compositions for washing and treating hair and/or skin, and more particularly conditioning shampoos. These compositions comprise:

- at least one anionic surfactant,
- at least one selected from zwitterionic and amphoteric surfactants,
- at least one polymer containing cationic groups, and
- at least one ceramide and/or glycosphingolipid

preferably in water (col. 14, lines 1-2 and examples).

The composition can comprise anti-seborrheic agents or anti-dandruff agents (col. 14, lines 10-13).

Cauwet does not teach the combination of anionic and amphoteric surfactants with active principles and pro-penetrating agents, as presently claimed.

The problem raised in Cauwet is to improve the disentangling of hair. It has been solved by combining a cationic polymer and ceramide and/or glycosphingolipid.

Therefore, there is no more suggestion in Cauwet, relative to the first three documents, to use 0.1 to 25 weight % of a pro-penetrating agent and to combine it with an anionic surfactant, an amphoteric surfactant and at least one active principle to solve the technical problem of the presently claimed invention.

Moreover, Cauwet fails to cure the deficiencies noted above with regard to the combination of Cameron, Preuilh and the cited passage of *The Handbook of Cosmetic Science and Technology*.

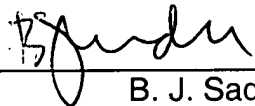
PREUILH et al.
Appl. No. 09/709,477
October 8, 2003

Claim 31 would not have been obvious and the dependent claims 52-54 and 56 are therefore also patentable over Cameron combined with Preuilh et al., *The Handbook of Cosmetic Science and Technology*, and Cauwet et al. Withdrawal of the Section 103 rejection is requested.

In view of the above, the claims are submitted to be in condition for allowance and a Notice to that effect is requested. The Examiner is requested to contact the undersigned if anything further is required in this regard.

Respectfully submitted,

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New Continuation Patent Application of PCT/FR99/01452

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Serial No.: (To Be Assigned) Date: November 13, 2000

Inventor/s: PREUILH et al. C#/M#: 2365-23

Title: FORMING COMPOSITION FOR HAIR CARE

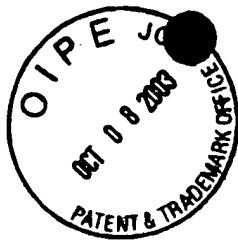
X Preliminary Amendment
33 Pages Specification, Claims & Abstract
30 Claims
X Information Disclosure Statement w/ 1449 and actual refs
X PTO-1449
X International Search Report
30 Fee (Check)
Other: Transmittal Letter (x2)

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09/709477



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COPY

Serial No.: 09/709477
Applicant: Prunithal
Title: foaming composition
for washing
Atty: BIS
Date: 4/13/02
Client: 2305-25
Ref: 2305-25

☒ Amendment
☐ Pages Specification
☐ Claims
☐ Sheets Drawings: Formal ☐ Informal ☐
☐ Declaration (☐ Pages)
☐ Assignment
☒ Priority Document FR 98 01802
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